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HOUSE BILL 338

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Henry Kiki Saavedra

FOR THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

**RELATING TO GOVERNMENT CONTRACTING; ENACTING THE CONTRACT
MANAGEMENT ACT; PROVIDING FOR CONTRACT MANAGEMENT AND
ACCOUNTABILITY.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. SHORT TITLE.--This act may be cited as the
"Contract Management Act".**

**Section 2. DEFINITIONS.--As used in the Contract
Management Act:**

**A. "agency" means a department, institution, board,
bureau, commission, district or committee of the state that
enters into or proposes to enter into a contract for
professional services;**

**B. "department" means the department of finance and
administration;**

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1 C. "performance contract" means a contract for
2 professional services that focuses on the outputs, quality and
3 outcomes of service provision and that ties at least a portion
4 of the contractor's payment to the achievement of those goals;
5 and

6 D. "professional services" means the services of
7 architects, archaeologists, engineers, surveyors, landscape
8 architects, medical arts practitioners, scientists, management
9 and systems analysts, certified public accountants, registered
10 public accountants, lawyers, psychologists, planners,
11 information technology experts, researchers, construction
12 managers and other persons or businesses providing similar
13 professional services.

14 Section 3. DETERMINATION OF CONTRACT NEED. --

15 A. Prior to making the decision to contract for
16 professional services, an agency shall evaluate the need for
17 the contract using an evaluation methodology that is similar to
18 the federal office of management and budget's evaluation for
19 the performance of commercial activities and that includes an
20 objective evaluation of state and private resources. The
21 evaluation shall assess the need to contract, considering
22 whether: the agency has the necessary skills and expertise to
23 deliver the service; the agency can provide the service at a
24 competitive price; the service would duplicate similar services
25 already being provided in the same geographic area; and there

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1 are deadline requirements that the agency may not be able to
2 meet. The agency shall proceed with the contracting process
3 only if the results of the evaluation show that the contract
4 would further the mission of the agency and be beneficial to
5 the state.

6 B. The agency's administrative services division,
7 general counsel and secretary, or their equivalent personnel in
8 noncabinet agencies, shall substantively review the decision to
9 contract, request for proposal process, final contract
10 negotiations and contract form and legal sufficiency.

11 C. Before entering into a contract for professional
12 services, an agency shall certify to the department that the
13 agency has complied with the provisions of Subsections A and B
14 of this section. The evaluation shall remain on file with the
15 contracting agency.

16 Section 4. CONTRACT MANAGEMENT AND IMPLEMENTATION. --

17 A. An agency shall not enter into a professional
18 services contract in which the maximum amount payable under the
19 contract is equal to or greater than one million dollars
20 (\$1,000,000) unless the agency has developed specific
21 guidelines for the administration and implementation of that
22 contract.

23 B. For professional services contracts in which the
24 maximum amount payable is less than one million dollars
25 (\$1,000,000), an agency shall use department guidelines or

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1 similar guidelines to identify and develop an effective system
2 for the management of the contracts. The guidelines shall
3 include:

4 (1) documentation to support the contract
5 solicitation and selection process;

6 (2) policies and procedures to ensure that
7 contractors do not provide services until a fully executed and
8 approved contract is in place;

9 (3) cost-effective methods to track contracts;
10 and

11 (4) filing of contracts and related
12 documentation.

13 C. If review is required by rule of the department
14 or the general services department pursuant to Section 13-1-118
15 NMSA 1978, the agency shall submit the contract for review no
16 less than thirty days prior to the effective date.

17 Section 5. PERFORMANCE CONTRACTING REQUIRED--
18 SPECIFICATIONS--TERMS AND CONDITIONS. --

19 A. Unless exempted pursuant to the provisions of
20 the Contract Management Act, a contract for professional
21 services entered into by an agency shall be a performance
22 contract if the maximum amount payable under the contract is
23 one hundred thousand dollars (\$100,000) or more.

24 B. The following elements shall be included in a
25 performance contract:

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1 (1) performance measures developed by the
2 agency specifically for that contract. The measures shall be
3 used by the agency to evaluate the services provided to the
4 agency and the outcomes resulting from those services;

5 (2) an accountability section that requires
6 the contractor to report regularly on how performance levels
7 are meeting the performance measures and that allows the agency
8 to withhold payment until successful completion of all or part
9 of a contract; and

10 (3) monitoring requirements that outline the
11 agency's evaluation of the contractor's performance, including
12 progress reports, activity data, site visits, inspections or
13 outcomes.

14 Section 6. DEPARTMENT--ADDITIONAL DUTIES.--The department
15 shall:

16 A. assist agencies in performance contract
17 development and management, including providing training
18 courses;

19 B. develop policies and procedures for performance
20 accountability in contract management;

21 C. use principles similar to those developed by the
22 federal office of management and budget to prepare guidelines
23 for agencies to conduct and document a meaningful contract
24 evaluation and to provide for different types of evaluations
25 depending on the types and amounts of the professional services

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1 contracts;

2 D. prepare guidelines for agencies on performance
3 contract specifications, terms and conditions that include
4 performance measures, accountability clauses, monitoring
5 provisions and auditing; and

6 E. selectively monitor contract procedures and
7 projects in agencies.

8 Section 7. APPLICABILITY. --

9 A. Except as provided in this section and pursuant
10 to the schedule developed by the department, the Contract
11 Management Act applies to any contract for professional
12 services entered into by an agency; provided that the
13 provisions do not apply to a contract for professional
14 services:

15 (1) for litigation expenses in connection with
16 proceedings before administrative agencies or state or federal
17 courts, including experts, mediators, court reporters, process
18 servers and witness fees, but not including attorney contracts;

19 (2) for hospital and health-care-related
20 services exempt from the provisions of the Procurement Code
21 pursuant to Section 13-1-98.1 NMSA 1978;

22 (3) in response to an emergency procurement
23 under Section 13-1-127 NMSA 1978; or

24 (4) exempted by rule of the department or
25 order of the secretary of finance and administration, but only

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1 to the extent specified in the rule or order. In exempting
2 contracts pursuant to this paragraph, the department or
3 secretary may consider the proposed amounts to be expended in
4 the contracts so that department and agency oversight resources
5 are efficiently concentrated on those contracts with the
6 highest pecuniary effects.

7 B. The department shall develop an agency schedule
8 so that all agencies, including the legislative and judicial
9 branches of government and institutions of higher education,
10 are implementing the provisions of the Contract Management Act
11 by the end of fiscal year 2007.

12 C. The Contract Management Act applies to contracts
13 entered into by agencies of the legislative branch of state
14 government, the judicial branch of state government and public
15 post-secondary educational institutions, but such agencies and
16 institutions:

17 (1) may develop their own policies, procedures
18 and guidelines similar to those required of the department in
19 Section 6 of the Contract Management Act;

20 (2) may provide for exemptions similar to
21 those allowed pursuant to Subsection A of this section; and

22 (3) are not required to report or make
23 submissions to the department.

24 D. No provision of the Contract Management Act
25 shall be applied to any situation, decision, proposed contract

1 or contract if the application of that provision to the
2 situation, decision, proposed contract or contract would
3 directly or indirectly impair a legally protected right.

4 Section 8. EFFECTIVE DATE. --The effective date of the
5 provisions of this act is July 1, 2004.

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